

*Final w/***DRAFT***City Atty Signoff*

SAN FRANCISCO RECREATION AND PARK DEPARTMENT
REVOCABLE PERMIT

THIS REVOCABLE PERMIT (this "Permit"), dated for reference purposes only as of March 1, 2001, is made by and between the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Recreation and Park Commission ("Commission"), and Four Embarcadero Center Venture, a California General Partnership ("Permittee"), and relates to the real property of Permittee known as Assessor's Block 233, Lot 44, commonly known as Four Embarcadero Plaza, San Francisco, California, and more fully described in Exhibit A and depicted in Exhibit B attached hereto ("Permittee's Land"), to a portion of that certain real property adjacent to Permittee's Land owned by City, commonly known as Justin Herman Plaza North, more particularly described in Exhibit C and depicted in Exhibit B hereto ("City's Land"), and to the demolition of an existing staircase, and construction of a replacement staircase.

City and Permittee agree as follows:

1. **License.** City confers to Permittee a revocable, personal, non-exclusive and non-possessory privilege to enter upon and use a portion of City's Land, which portion is particularly described and depicted in Exhibit D (the "Permit Area"), for the limited purpose and subject to the terms, conditions and restrictions set forth below. This Permit gives Permittee a license only and notwithstanding anything to the contrary herein, this Permit does not constitute a grant by City of any ownership, leasehold, easement or other property interest or estate whatsoever in the Permit Area, or any portion thereof. Nothing in this Permit shall be construed as granting or creating any franchise rights pursuant to any federal, state or local laws. The Permit is not exclusive and the City reserves the right to use or permit others to use any part of the Permit Area for any purpose that does not impede access to, or egress from, the Improvements.

2. **Use of Permit Area.**

Permitted Activity. Permittee may enter and use the Permit Area for the sole purpose of replacing an existing staircase and constructing, maintaining and repairing the replacement staircase, which will provide improved public access between Four Embarcadero Plaza and Justin Herman Plaza North. The replacement staircase ("the Improvements") will be constructed at the location of the existing staircase, between Four Embarcadero Plaza and Justin Herman Plaza North, approximately 150 feet south of Clay Street. As with the previous staircase, the replacement staircase will project a maximum of 29 feet into Justin Herman Plaza North from the easterly boarder of Four Embarcadero, and project a total height of 33.6 feet. Decorative paving at the base of the new staircase will project a maximum of 44.5 feet. The staircase is depicted in Exhibit E hereto. The Improvements will consist of the following: an architectural concrete deck, curved glass railing, stainless steel hand/guardrails, decorative lighting, stamped aluminum formed letters for identification, and pavement consisting of decorative stone pavers and concrete.

3. **Installation of Improvements.** Permittee may construct, modify, repair and maintain the Improvements on the Permit Area, only upon satisfaction of the following conditions, which are for the sole benefit of City:

(a) **Approval of Plans and Specifications.** Permittee shall construct, modify or repair the Improvements in accordance with plans and specifications (including drawings) approved in advance, in writing, by the General Manager of the Recreation and Park Department. Before constructing, repairing or modifying the Improvements, Permittee must also prepare and submit a work plan to the Recreation and Park Department ("Department") and must receive the Department's written approval to proceed according to the work plan. The plans and specifications may be revised or amended only with prior written approval of the Department and after the Department has determined that no further environmental review is required by CEQA as a result of any such revision or amendment.

(b) **Permits and Approvals.** Before beginning any work in the Permit Area, other than routine maintenance, Permittee shall obtain any and all permits, licenses and approvals (collectively, "approvals") of all regulatory agencies and other third parties that are required to commence, complete and maintain the permitted work. Promptly upon receipt of such approvals, Permittee shall deliver copies to the Department. Permittee recognizes and agrees that no approval by the Department for purposes of Permittee's work hereunder shall be deemed to constitute the approval of any federal, state or local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such regulatory approvals, at Permittee's sole cost.

(c) **Exercise of Due Care.** Permittee shall use, and shall cause its Agents (as defined below) to use, due care at all times to avoid any damage or harm to City's property, including but not limited to the Permit Area.

(d) **Work Schedule.** Permit must begin the construction of the Improvements within one hundred eighty (180) days after the commencement of the term of this permit. At least five (5) days prior to the commencement of any work on the Permit Area, other than routine maintenance, Permittee shall notify the Department of the date such work shall commence and the intended construction schedule. Notwithstanding the approval of such schedule by the Department, the Department shall have the right to require Permittee to adjust such schedule from time to time. Permittee shall complete construction of the Improvements no later than two hundred forty (240) days after the commencement of the term of this Permit.

(e) **Approval of Work.** Permittee shall notify City promptly of completion of construction of the Improvements. Within ten (10) days of receipt of such notice City shall inspect the Improvements and inform Permittee in writing, whether it approves the work as executed. City's approval shall not be unreasonably withheld.

(f) **Restoration of Permit Area.** Immediately following completion of the work permitted hereunder, Permittee shall remove all debris and any excess dirt and, with the exception of the area occupied by the Improvements, shall restore the Permit Area to its condition immediately prior to Permittee's work hereunder, to the reasonable satisfaction of City.

(g) **Erosion Control.** Permittee shall take all reasonable steps requested by City to minimize erosion in the Permit Area or on City's Land that is due to, or could result from, Permittee's activities in the Permit Area or the Improvements.

(h) **As-Built Drawings/Reports.** Immediately following completion of the work permitted hereunder, Permittee shall furnish the Department with two (2) completed copies of final as-built drawings for the Improvements. In the event that Permittee or its agents or consultants prepares any environmental, seismic, geophysical or other written report relating to the Permit Area and/or any work performed thereon, Permittee shall furnish to City a complete copy of such report (or such portion thereof as relates to the Permit Area), including any schedules, exhibits and maps, promptly upon completion of the same.

(i) **Responsibility for Repair and Maintenance of Facilities.** Permittee shall be solely responsible for repairing and maintaining the Improvements and the Permit Area in good and safe conditions, and City shall have no duty whatsoever for any repair or maintenance of the Permit Area or any such facilities therein. Permittee shall notify City in writing not less than five (5) days before performing any repair or maintenance work, other than routine maintenance work, in the Permit Area, except in the case of an emergency wherein Permittee shall notify City telephonically and in writing as soon as reasonably possible.

(j) **Revocability.** Permittee acknowledges and agrees that the execution of the Improvements permitted hereunder, regardless of cost, shall not in any way whatsoever limit City's right to revoke this Permit pursuant to the terms hereof or any of City's other rights hereunder.

4. **Ownership of the Improvements.** The Improvements shall be and remain Permittee's property during the term of the Permit. Upon revocation hereof, Permittee shall, upon City's request, remove the Improvements in accordance with the provisions of Section 15, unless City, at its sole option, specifies upon, or prior to, revocation that the Improvements shall remain on the Permit Area and shall, upon revocation, become City property without compensation to Permittee. After City assumes ownership of the Improvements, City shall remove the Improvements only after securing all required permits pursuant to the procedures set forth in the City's Building Code.

5. **Restrictions on Use.** Permittee agrees that, by way of example only and without limitation, the following uses of the Permit Area by Permittee, or any other person claiming by or through Permittee, are inconsistent with the limited purpose of this Permit and are strictly prohibited as provided below:

(a) **Improvements.** Except for the Improvements described in section 2, Permittee shall not construct or place any temporary or permanent structures or improvements in, on, under or about the Permit Area, nor shall Permittee make any alterations or additions to any of existing structures or improvements on the Permit Area, unless Permittee first obtains City's prior written consent, which City may give or withhold in its sole and absolute discretion.

(b) **Trees and Other Plantings.** Permittee shall not plant any trees or other vegetation in or on the Permit Area, except as otherwise expressly provided herein.

(c) **Dumping.** Permittee shall not cause, sanction or authorize the dumping or other disposal on, under or about the Permit Area of landfill, refuse, Hazardous Material (as defined below) or any other materials that are unsightly or could pose a hazard to the human health or safety, vegetation or wildlife, or the environment. The Permit Area shall be maintained to present clean, neat and orderly appearance by Permittee, and Permittee shall dispose of refuse resulting from its use, including waste material, garbage and rubbish of all kinds as required by Department.

(d) **Hazardous Material.** Permittee shall not cause, nor shall Permittee allow any of its Agents or Invitees (as such terms are defined below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Permit Area, or transported to or from the Permit Area. Permittee shall immediately notify City when Permittee learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Permit Area. Permittee shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination caused by Permittee or its Agents or Invitees. In the event that Permittee or its Agents or Invitees cause a release of Hazardous Material, Permittee shall, without cost to City and in accordance with all laws and regulations, return the Permit Area to the condition immediately prior to the release. In connection therewith, Permittee shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*, or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Permit Area or are naturally occurring substances in the Permit Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Permit Area.

(e) **Nuisances.** Permittee shall not conduct any activities on or about the Permit Area that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to City, to the owners or occupants of neighboring property or to the public.

(f) **Damage.** Permittee shall use, and shall cause its Agents (as defined below) to use, due care at all times to avoid any damage to City's Land, any property of City or the Permit Area.

(g) **Use Limited to Permit Area.** Permittee acknowledges that the privilege given under this Permit shall be strictly limited to the Permit Area. Permittee shall not traverse over or otherwise use any adjoining lands of City.

6. **Use Fee.** In exchange for Permittee's payment of fees in consideration for Permittee's use of the Permit Area as provided hereunder, Permittee has agreed to perform maintenance services in portions of Justin Herman Plaza and the Belvedere Areas adjacent thereto as depicted in Exhibit F hereto. The required maintenance services are described fully in Exhibit G hereto, which is incorporated herein by reference.

7. **Term of Permit.** The privilege conferred to Permittee pursuant to this Permit shall commence on the date on which this Permit is executed and delivered by City following the Department authorization and approval, the receipt of all security required to be provided hereunder, and the recordation of the Declaration of Covenants, Conditions and Restrictions required hereunder (the "Commencement Date"), and shall immediately expire upon written notice from City revoking this Permit. City may at its sole option freely revoke this Permit at any time without cause or liability, and without any obligation to pay any consideration to Permittee or return to Permittee any part of the costs associated with steam cleaning and power washing Justin Herman Plaza. Upon any such revocation, Permittee will immediately surrender the Permit Area in the condition required hereunder.

8. **Security for Performance.** At or before the Commencement Date, Permittee shall submit a corporate guarantee executed by Boston Properties L.P. in the sum of eight hundred Thousand Dollars (\$800,000.00) as security for Permittee's construction of the Improvements in accordance with plans and specification approved pursuant to Section 3(a) above. The corporate guarantee shall expire upon approval of the completed Improvements in accordance with Section 3(e) above. At or before the Commencement Date, Permittee shall submit either an irrevocable letter of credit in the amount of Two Hundred Thousand Dollars (\$200,000.00) or a corporate guarantee in a form reasonable approved by City and executed by Boston Properties L.P. in the amount of Two Hundred Thousand Dollars (\$200,000.00) to secure Permittee's faithful performance of the other terms and conditions of this Permit. The letter of credit or corporate guarantee shall remain in effect until this Permit is revoked consistent with its terms. Should City use any portion of the letter of credit to cure any default by Permittee hereunder, Permittee shall immediately replenish the letter of credit to the original amount. City's obligations with respect to the any letter of credit are solely that of debtor and not trustee. Permittee shall not be entitled to any interest on such letter of credit. The amount of the letter of credit or corporate guarantees shall not be deemed to limit Permittee's liability for the performance of any of its obligations under this Permit.

9. **Reimbursement of City's Costs.** Within thirty (30) days after City's written request, Permittee shall reimburse City for City's reasonable costs incurred after the Commencement Date, including, without limitation, attorneys' fees and costs incurred in connection with any review, investigation, processing, documentation and/or approval of documents related to the Permit Area by City hereunder. Any amount owed by Permittee to City which is not paid when due shall bear interest at the rate of five percent (5%) per annum from the due date of such amount. The payment of interest on such amounts shall not excuse or cure any default by Permittee under this Permit. If

the interest rate specified herein is higher than the rate permitted by law, the interest rate is hereby decreased to the maximum legal interest rate then permitted by law.

10. Insurance.

(a) Permittee shall procure and keep in effect at all times during the term of this Permit, at Permittee's expense, and require its contractors and subcontractors, and independent contractors to maintain at all times during any construction activities on the Permit Area, insurance as follows:

(i) Comprehensive General Liability Insurance with limits not less than \$1,000,000.00 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Contractors, Explosion, Collapse and Underground (XCU), and Broadform Property Damage; and

(ii) Sudden and Accidental Pollution Insurance with limits not less than \$100,000.00 each occurrence.

(b) Permittee shall procure and keep in effect at all times during any construction activities on the Permit Area, at Permittee's expense, and require its contractors and subcontractors to maintain at all times during any construction activities on the Permit Area, insurance as follows:

(i) Automobile Liability Insurance with limits not less than \$1,000,000.00 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired automobiles, as applicable, and sudden and accidental pollution; and

(ii) Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than \$1,000,000.00 each accident.

(c) Professional liability (errors or omissions) insurance, with limits not less than \$7,500,000.00 each claim and aggregate, on a project-specific basis, providing that such limits are dedicated to the staircase construction project, including coverage for all design and engineering professional services in connection with this project, with any deductible not to exceed \$25,000.00 each claim.

(d) All General Liability, Pollution Liability and Automobile Liability policies required hereunder shall provide for the following: (i) an additional insured endorsement in favor of the City and County of San Francisco and its officers, agents and employees, and Permittee shall provide to the City a copy of the additional insured endorsement; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Sudden and accidental pollution coverage in the liability

policies required hereunder shall be limited to losses resulting from Permittee's activities (and Permittee's Agents and Invitees) under this Permit (excluding nonnegligent aggravation of existing conditions with respect to Hazardous Materials). The general liability coverages required hereunder shall name the City and its officers, agents and employees as additional insureds in accordance with the standard additional insured endorsement form CG2010 (1185).

(e) All policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage to City.

(f) Prior to the Commencement Date of this Permit, Permittee shall deliver to City certificates of insurance, in form and with insurers satisfactory to City, and copies of endorsements to the policies evidencing the coverage required hereunder, together with other reasonable evidence of such coverage at City's request. In the event Permittee shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, the same for the account of Permittee, and the cost thereof shall be paid to City within five (5) days after delivery to Permittee of bills therefor.

(g) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(h) Should any of the required insurance be provided under a claims made form, Permittee shall maintain such coverage continuously throughout the term of this Permit and, without lapse, for a period of three (3) years beyond the Permit expiration, to the effect that, should any occurrences during the Permit term give rise to claims made after expiration of the Permit, such claims shall be covered by such claims-made policies.

(i) Upon City's request, Permittee and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Permittee for risks comparable to those associated with the Permit Area, then City in its sole discretion may require Permittee to increase the amounts or coverage carried by Permittee hereunder to conform to such general commercial practice.

(j) Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations under this Permit or any of Permittee's other obligations hereunder. Notwithstanding anything to the contrary in this Permit, this Permit shall terminate immediately, without notice to Permittee, upon the lapse of any required insurance coverage. Permittee shall be responsible, at its expense, for separately insuring Permittee's personal property.

11. **Compliance with Laws.** Permittee shall, at its expense, conduct and cause to be conducted all activities on the Permit Area allowed hereunder in a safe and reasonable manner and in compliance with all laws, regulations, ordinances and orders of any governmental or other regulatory

entity whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Permittee shall, at Permittee's sole expense, procure and maintain in force at all times during Permittee's use of the Permit Area any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. Permittee understands and agrees that City is entering into this Permit in its capacity as a property owner with a proprietary interest in the Permit Area and not as a regulatory agency with police powers. Permittee further understands and agrees that no approval by City for purposes of this Permit shall be deemed to constitute approval of any federal, state, City or other local regulatory authority with jurisdiction, and nothing herein shall limit Permittee's obligation to obtain all such regulatory approvals at Permittee's sole cost or limit in any way City's exercise of its police powers.

12. **Covenant to Maintain Permit Area; Replacement of Improvements.** In connection with its use hereunder, Permittee shall at all times, at Permittee's sole cost, maintain the Permit Area in a good, clean, safe, secure, sanitary and sightly condition, which includes, but is not limited to, free from graffiti and debris. Permittee shall inspect the Permit Area regularly.

13. **Signs.** Permittee shall not place, erect or maintain any sign, advertisement, banner or similar object in, on, or about the Permit Area, except for the approved identification sign above the staircase more fully described in Exhibit E without the City's written consent, which City may withhold in its sole discretion; provided, however, Permittee may place in the Permit Area a temporary sign of less than thirty (30) days' duration that is necessary for Permittee's construction use and which does not extend below the ground surface without the City's written consent.

14. **Covenants, Conditions and Restrictions.** As a material consideration for this Permit, Permittee shall sign and have notarized the Declaration of Covenants, Conditions and Restrictions, attached hereto as Exhibit H, which shall be recorded as a condition to the effectiveness of this Permit. The covenants, conditions and restrictions set forth in the Declaration shall run with the land and shall inure to the benefit of any successor owners of City's Land and burden any successor owners of Permittee's Land.

15. **Surrender.** Upon the revocation of this Permit, Permittee shall surrender the Permit Area in good condition, order and repair, free from hazards and clear of all debris. At such time, Permittee shall at its sole cost remove all of its property from the Permit Area permitted hereunder, including, at City's request, the Improvements and all debris associated therewith and shall repair, at Permittee's cost, any damage to the Permit Area caused by such removal or Permittee's use hereunder and restore the Permit Area to its condition before Permittee's use thereof. Upon such request from City, Permittee shall remove the Improvements only after securing all required permits pursuant to the procedures set forth in the City's Building Code. Permittee's obligations under this Section shall survive any revocation of this Permit.

16. **Repair of Damage.** If any portion of the Permit Area or any property of City located on or about the Permit Area is damaged or threatened by any of the activities conducted by Permittee or anyone acting by or through Permittee hereunder, Permittee shall immediately, at its sole cost, notify City by facsimile of such damage or threat. Permittee shall remedy any and all such damage or threat and restore the Permit Area or property to its previous condition subject to City's inspection, review

and approval. City may witness Permittee's repair work. If Permittee fails to remedy such damage or threat within 7 days of Permittee's notice required herein, or within 7 days of City's notice to Permittee of such damage or threat, City may, but shall not be obligated to, remedy such damage or threat at Permittee's sole cost.

17. **Location of Utilities.** City has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Permit Area. Permittee has the sole responsibility to locate such utilities and protect them from damage. Permittee shall arrange and pay for any necessary temporary or permanent relocation of City and public utility company facilities, subject to the prior written approval by City and any such utility companies of any such relocation. Permittee shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities hereunder.

18. **City's Right to Cure Defaults by Permittee.** If Permittee fails to perform any of its obligations under this Permit to restore the Permit Area, remove or alter facilities or repair damage, or if Permittee defaults in the performance of any of its other obligations under this Permit, then City may, at its sole option, remedy such failure for Permittee's account and at Permittee's expense by providing Permittee with five (5) days' prior written notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of any rights or remedies of City under this Permit, and nothing herein shall imply any duty of City to do any act that Permittee is obligated to perform. Permittee shall pay to City upon demand, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Permittee's obligations under this Section shall survive the termination of this Permit.

19. **No Costs to City.** Permittee shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Area, and shall keep the Permit Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Area.

20. **Indemnity.** Permittee shall indemnify, defend and hold harmless City, its officers, agents, employees and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind ("Claims"), arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Permit Area, or any part thereof, whether the person or property of Permittee, its officers, employees, agents, contractors or subcontractors (collectively, "Agents"), its invitees, guests or business visitors (collectively, "Invitees"), or third persons, relating to any use or activity under this Permit, (b) any failure by Permittee to faithfully observe or perform any of the terms, covenants or conditions of this Permit, (c) the use of the Permit Area or any activities conducted thereon by Permittee, its Agents or Invitees, or (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Permittee, its Agents or Invitees, on, in, under or about the Permit Area, any improvements or into the environment; except solely to the extent of Claims resulting directly from the gross negligence or willful misconduct of City or City's authorized representatives. In addition to Permittee's obligation to indemnify City, Permittee specifically acknowledges and agrees that it has

an immediate and independent obligation to defend the City from any claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Permittee by City and continues at all times thereafter. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Permit Area or other adjoining City property. Permittee's obligations under this Section shall survive the expiration or other termination of this Permit.

21. Waiver of Claims.

(a) Neither City nor any of its commissions, Departments, boards, officers, agents or employees shall be liable for any damage to the property of Permittee, its officers, Agents, Invitees employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Permit Area or its use by Permittee.

(b) Permittee acknowledges that this Permit is freely revocable by City and in view of such fact, Permittee expressly assumes the risk of making any expenditures in connection with this Permit, even if such expenditures are substantial. Without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its Departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that City exercises its right to revoke or terminate this Permit.

(c) Permittee acknowledges that it will not be a displaced person at the time this Permit is terminated or revoked or expires by its own terms, and Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its Departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

(d) Permittee expressly acknowledges and agrees that the fees payable hereunder do not take into account any potential liability of City for any consequential or incidental damages arising out of Permittee's uses hereunder. Permittee acknowledges that City would not be willing to give this Permit in the absences of a waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Permittee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes

of action against for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Permit or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Permittee pursuant to this Permit, regardless of the cause, and whether or not due to the negligence of City or its Agents, except for the gross negligence and willful misconduct of City or its Agent.

(e) As part of Permittee's agreement to accept the Permit Area in its "As Is" condition as provided below, and without limiting such agreement, Permittee on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, City and its Agents, and their respective heirs, successors, administrators, personal representatives and assigns, from any and all Claims, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Permit Area and any related improvements or any law or regulation applicable thereto or the suitability of the Permit Area for Permittee's intended use.

(f) In connection with the foregoing releases, Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Permittee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has agreed upon this Permit in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Permit.

22. **As Is Condition of Permit Area; Disclaimer of Representations.** Permittee accepts the Permit Area in its "AS IS" condition, without representation or warranty of any kind by City, its officers, agents or employees, and subject to all applicable laws, rules and ordinances governing the use of the Permit Area. Without limiting the foregoing, this Permit is made subject to any and all covenants, conditions, restrictions, easements, encumbrances and other title matters affecting the Permit Area, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

23. **No Assignment Without Consent.**

(a) This Permit is personal to Permittee and shall not be assigned, conveyed or otherwise transferred ("Assignment") by Permittee without the prior written consent of Department, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Permittee may assign this Permit upon notification to City of its intent to assign and

upon submitting to City the following: 1) proof of the proposed Assignee's insurance and insurance policy endorsements s required in Section 10(e); 2) the proposed Assignee's express assumption, for the benefit of City, of all of the obligations of Permittee under this Permit, in the form attached hereto as Exhibit I; and 3) an irrevocable letter of credit or other instrument of credit acceptable to City in the amount of \$200,000.00 to secure the proposed Assignee's faithful performance of the terms and conditions of this Permit.

(b) Each Assignee shall assume all obligations of Permittee under this Permit and shall be liable for the performance of all the terms, covenants and conditions to be performed on Permittee's part hereunder. The assigning Permittee shall be released from all liabilities and obligations hereunder arising from events occurring from and after the later of the date of the closing of the sale of Permittee's Land or the date of approval by Department of the transferring Permittee's request for assignment.

24. Cessation of Use. Permittee will not terminate its activities to repair, replace or maintain improvements within the Permit Area pursuant hereto without prior written notice to City.

25. No Joint Ventures or Partnership; No Authorization. This Permit does not create a partnership or joint venture between City and Permittee as to any activity conducted by Permittee on, in or relating to the Permit Area. Permittee is not a state actor with respect to any activity conducted by Permittee on, in, or under the Permit Area. The giving of this Permit by City does not constitute authorization or approval by City of any activity conducted by Permittee on, in or relating to the Permit Area.

26. Tropical Hardwoods and Virgin Redwood. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood product, virgin Redwood, or virgin Redwood product.

27. Taxes, Assessments, Licenses, Permit Fees and Liens.

(a) Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest. Permittee further recognizes and understands that any transfer or assignment permitted under this Permit and any exercise of any option to renew or extend this Permit may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder.

(b) Permittee agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Permittee's usage of the Premises that may be imposed upon Permittee by law, all of which shall be paid when the same become due and payable and before delinquency.

(c) Permittee agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the

same, provided that Permittee, if so desiring, may have reasonable opportunity to contest the validity of the same.

(d) San Francisco Administrative Code Sections 23.6-1 and 23.6-2 require that the City and County of San Francisco report certain information relating to this Permit, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction, and that Permittee report certain information relating to any assignment of or transfer under this Permit to the County Assessor within sixty (60) days after such assignment or transfer transaction. Permittee agrees to provide such information as may be requested by the City to enable the City to comply with this requirement.

28. **Notices.** Except as otherwise expressly provided herein, any notices given under this Permit shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail with a return receipt requested or overnight courier, return receipt requested, with postage prepaid, addressed as follows:

City & Department: San Francisco Recreation and Park Department
McLaren Lodge, Golden Gate Park
501 Stanyan Street
San Francisco CA 94117-1898
Attn: General Manager

with a copy to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: Deputy City Attorney
for Recreation and Park Department matters
Fax No.: (415) 554-4747

Commission: San Francisco Recreation and Park Commission
McLaren Lodge, Golden Gate Park
501 Stanyan Street
San Francisco CA 94117-1898
Attn: Commission Secretary

Permittee: 4 Embarcadero Center Venture
Four Embarcadero Center, Lobby Level, Suite One
San Francisco, CA 94111-5994
Attn: Bob Pester
Fax No. (415) 772-0665

or such other address with respect to the parties as any party may from time to time designate by notice to the other parties pursuant to the provisions of this Section.

Notices herein shall be deemed given two (2) days after the date when they shall have been mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

29. No Tobacco Advertising.

Permittee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject of this Permit. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

30. Pesticide Prohibition. Permittee shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibits the use of certain pesticides on City property, and (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Permittee to submit to the Recreation and Park Department an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Permittee may need to apply to the Permit Area during the term of this Permit, (b) describes the steps Permittee will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Permittee's primary IPM contact person with the City. In addition, Permittee shall comply with the requirements of Section 39.4(a) and 39.4(b) of the Pesticide Ordinance.

31. Conflict of Interest. Permittee states that it is familiar with the provisions of Section 15.103 and C8.105 of the San Francisco Charter and certifies that it knows of no facts that would constitute a violation of such provisions. Permittee further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Permittee believes any officer or employee of the City presently has or will have in this Permit or in the performance thereof.

32. General Provisions. (a) This Permit may be amended or modified only by a writing signed by City and Permittee. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) All approvals and determinations of City requested, required or permitted hereunder may be made in the sole and absolute discretion of the General Manager of the Recreation and Park Department or his or her designee unless otherwise indicated. (d) This instrument (including the exhibits hereto, all of which are incorporated herein) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (e) The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. (f) Time is of the essence. (g) This Permit shall be governed by California law and City's Charter. (h) If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of City shall be based on the fees regularly

charged by private attorneys in San Francisco with comparable experience. (i) If Permittee consists of more than one person then the obligations of each person shall be joint and several. (j) Subject to the prohibition against assignments or other transfers by Permittee hereunder, this Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns.

33. Disclosure. Permittee understands and agrees that under the City's Sunshine Ordinance (S.F. Administrative Code Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.) apply to this Permit and any and all records, information, and materials submitted to the City in connection with this Permit. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Record Law. Permittee hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with this Permit.

PERMITTEE REPRESENTS AND WARRANTS TO CITY THAT IT HAS READ AND UNDERSTANDS THE CONTENTS OF THIS PERMIT, HAS HAD AN OPPORTUNITY TO REVIEW AND DISCUSS IT WITH COUNSEL OF ITS CHOOSING, AND AGREES TO COMPLY WITH AND BE BOUND BY ALL OF ITS PROVISIONS.

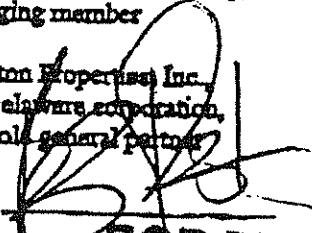
PERMITTEE:

FOUR EMBARCADERO CENTER VENUTRE,
a California general partnership

By: Boston Properties LLC,
a Delaware limited liability company,
its managing general partner

By: Boston Properties Limited Partnership,
a Delaware limited partnership,
its managing member

By: Boston Properties Inc.,
A Delaware corporation,
its sole general partner

By: 

Name:

BOB PESTER

Its:

Senior Vice President
and Regional Manager

Date:

3/16/01

GA

PERMITTEE:

FOUR EMBARCADERO CENTER VENUTRE,
a California general partnership

By: Boston Properties LLC,
a Delaware limited liability company,
its managing general partner

By: Boston Properties Limited Partnership,
a Delaware limited partnership,
its managing member

By: Boston Properties, Inc.,
A Delaware corporation,
its sole general partner

By: 

Name:

Douglas T. Linde
Senior Vice President - CFO

Its:

Date:

3/14/01

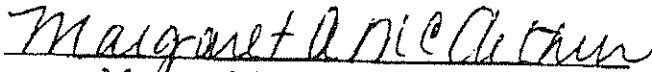
CITY:
CITY AND COUNTY OF SAN
FRANCISCO,
a municipal corporation



General Manager
Recreation and Park Department

APPROVED:

Approved by Resolution No 001-009 of the
San Francisco Recreation and Park Commission



Margaret McArthur
Secretary, Recreation and Park Commission

APPROVED AS TO FORM:

LOUISE H. RENNE
City Attorney

By: _____

Mariam M. Morley
Deputy City Attorney

State of CALIFORNIA
 County of SAN FRANCISCO

On 3-28-01 before me, NICOLE N. NICHOLSON, NOTARY
(DATE) (NAME/TITLE OF OFFICER - e.g. "JANE DOE, NOTARY PUBLIC")
 personally appeared Elizabeth Goldstein
(NAME(S) OF SIGNER(S))

☐ personally known to me -OR- ☐

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

(SEAL)

Nicholson Nicholson
(SIGNATURE OF NOTARY)

ATTENTION NOTARY

The information requested below and in the column to the right is OPTIONAL. Recording of this document is not required by law and is also optional. It could, however, prevent fraudulent attachment of this certificate to any unauthorized document.

THIS CERTIFICATE
 MUST BE ATTACHED
 TO THE DOCUMENT
 DESCRIBED AT RIGHT:

Title or Type of Document Revocable Trust
 Number of Pages _____ Date of Document _____
 Signer(s) Other Than Named Above _____

RIGHT THUMBPRINT (Optional)

TOP OF THUMB HERE

CAPACITY CLAIMED BY SIGNER(S)
☐ INDIVIDUAL(S)
☐ CORPORATE _____

OFFICER(S) _____
(TITLE(S))

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

☐ ATTORNEY IN FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER: _____

SIGNER IS REPRESENTING:
(Name of Person(s) or Entity(ies))

RIGHT THUMBPRINT (Optional)

TOP OF THUMB HERE

CAPACITY CLAIMED BY SIGNER(S)
☐ INDIVIDUAL(S)
☐ CORPORATE _____

OFFICER(S) _____
(TITLE(S))

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

☐ ATTORNEY IN FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER: _____

SIGNER IS REPRESENTING:
(Name of Person(s) or Entity(ies))

SF Rec

Patricia

EXHIBIT A**DESCRIPTION OF PERMITTEE'S LAND**

All that certain real property located in the City and County of San Francisco, California, described as follows:

Beginning at the point of intersection of the former center line of Sacramento Street, as said Street existed prior to vacation thereof by Resolution No. 203-67, adopted by the Board of Supervisors on March 20, 1967 and approved by the Mayor on March 27, 1967 with a line drawn northwesterly at a right angle to the northwesterly line of Market Street from a point distant thereon 353.249 feet northeasterly from the northerly line of California Street; running thence northwesterly along the northwesterly extension of said line drawn at a right angle to Market Street from said point, a distance of 199.753 feet to its intersection with a line drawn southerly at a right angle to the southerly line of Clay Street from a point distant thereon 210.949 feet easterly from the easterly line of Drumm Street; thence northerly along last said line so drawn 137.50 feet to the southerly line of Clay Street; thence at a right angle westerly along said southerly line of Clay Street 210.949 feet to the present easterly line of Drumm Street, as said Drumm street is shown on that certain map entitled, "Map showing the widening of Drumm Street from Jackson Street to California Street and Washington Street from Drumm Street to the Embarcadero," filed December 1, 1977, in Map Book "W" at page 93; thence at a right angle southerly and along said easterly line of Drumm Street 299.563 feet to the said former center line of Sacramento Street; thence easterly along said former center line of Sacramento Street 327.725 feet to the point of beginning.

Being a portion of 50 Vara Block "C", also known as a portion of Assessor's Block 233, and portions of Commercial Street and Sacramento Street now vacated as per "Record of Survey Map of the Golden Gateway," recorded September 29, 1961, in Book "T" of maps, at pages 22,23 and 24 in the Office of the Recorder of the City and County of San Francisco, State of California.

Excepting from that portion thereof lying within the lines of former Sacramento Street and former commercial street, all oil, gas, oil shale, coal, phosphate, sodium, gold, silver and all other mineral deposits, together with the right to drill for and extract such deposits of oil and gas, or gas, and to prospect for, mine and remove such deposits of other minerals, subject to the provision that the right to drill for and extract such deposits of oil and gas, or gas, and to prospect for, mine, and remove such deposits of other minerals, shall be with the consent of the Grantee and shall not disturb the surface, or the ground within 100 feet of the surface of the real property conveyed, as reserved in quitclaim deed dated June 20, 1962, from the State of California to the Redevelopment Agency of the City and County of San Francisco, Recorded June 25, 1962 in Book A439, Page 955, Series No. 102734, Official Records

Also being a portion of what is currently known as Assessor's Block 233 Lot 44.

EXHIBIT B

MAP SHOWING PERMITTEE'S AND CITY'S LAND

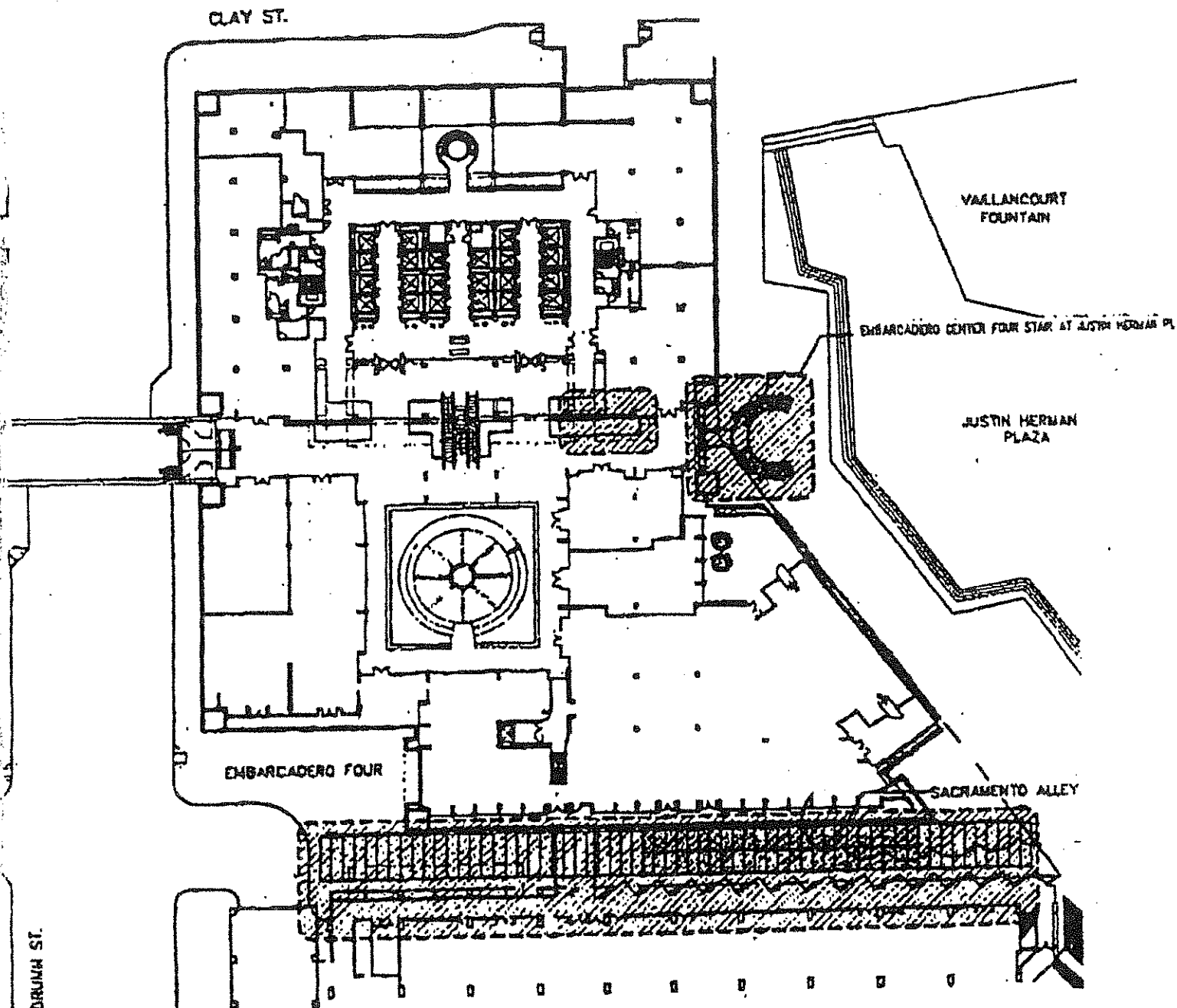


EXHIBIT C

DESCRIPTION OF CITY'S LAND

All that certain real property located in the City and County of San Francisco, California, described as follows:

Beginning at a point on the northwesterly line of Market Street, distant thereon 353.249 feet northeasterly from the northerly line of California Street, as said streets and shown on that certain map entitled, "Record of Survey Map of the Golden Gateway," recorded September 29, 1961, in Book "T" of the City and County of San Francisco, State of California; running thence northwesterly at a right angle to said line of Market Street 314.444 feet, more or less, to a line drawn southerly at a right angle to the northerly line of Clay Street from a point distant thereon 236.199 feet easterly from the easterly line of Drumm Street; thence northerly along said line so drawn 186.625 feet to the northerly line of Clay Street; thence easterly along said northerly line of Clay Street 191.114 feet to the intersection thereof with a line drawn southerly at a right angle to the northerly line of Merchant Street from the point of intersection of said line of Merchant Street with the northeasterly boundary line of 50 Vara Block "D", as said block is shown on the above referenced map; thence at a right angle southerly along said line so drawn to the point of intersection thereof with a line drawn from the southeasterly corner of 50 Vara Block "D" to the northeasterly corner of 50 Vara Block "C"; thence southeasterly along last said boundary line and its extension southeasterly and along the northeasterly boundary line of 100 Vara Block No. 317, as shown on said map 745.728 feet, more or less, to a line drawn parallel with the perpendicularly distant 250 feet northwesterly from the northwesterly line of Mission Street; thence southwesterly along last said line so drawn 137.50 feet to the northeasterly line of Steuart Street; thence northwesterly along said line of Steuart Street and its extension northwesterly 420.333 feet, more or less, to the northwesterly line of Market Street; thence southwesterly along said line of Market Street 82.50 feet to the point of beginning.

Being portions of 50 Vara Blocks "A" and "C" and a portion of 100 Vara Block No. 317, and also portions of Clay Street, Commercial street, Sacramento Street and Market Street, all as shown on "Record of Survey Map of the Golden Gateway," herein above referred to.

Excepting therefrom all that portions thereof described as follows:

Beginning at a point on the southwesterly line of the Embarcadero, distant thereon 137 feet and 6 inches southeasterly from the southeasterly line of Market Street, as the same are shown on that map herein above referred to; running thence southeasterly along said line of the Embarcadero 137 feet and 6 inches; thence at a right angle southwesterly 137 feet and 6 inches; thence at a right angle southwesterly 137 feet and 6 inches; thence at a right angle southwesterly 137 feet and 6 inches; thence at a right angle southwesterly 137 feet and 6 inches to the northeasterly line of Steuart Street; thence at a right angle northwesterly along said line of Steuart Street 137 feet and 6 inches; thence at a right angle northeasterly 137 feet and 6 inches to the point of beginning.

Being a portion of 100 Vara Block No. 317.

Also excepting from those portions thereof lying within former Clay Street, Commercial street, Sacramento Street and Market Street (all now vacated), all oil, gas, oil shale, coal, phosphate, sodium, gold, silver and all other mineral deposits, together with the right to drill for and extract such deposits of oil and gas, or gas, and to prospect for, mine, and remove such deposits of other minerals from said portions, as reserved in the Quitclaim Deed from the State of California to the San Francisco Redevelopment Agency, dated June 20, 1962, recorded June 25, 1962, in Book A-439, page 955, Official Records of the City and County of San Francisco and in the Quitclaim Deed by and between the same parties, dated December 16, 1966, recorded February 10, 1967, in Book B-117 of Official Records, at page 159, in said County Recorder's Office.

Also being a portion of what is currently known as Assessor's Block 233 Lot 35.

EXHIBIT D

DESCRIPTION AND MAPS OF PERMIT AREA

(See attached.)

PARCEL 1

THAT PORTION OF A CIRCULAR PARCEL OF LAND HAVING A RADIUS OF 24.00 FEET LYING EASTERLY OF THE FOLLOWING DESCRIBED PROPERTY LINE:

BEGINNING AT THE POINT OF INTERSECTION OF THE FORMER CENTER LINE OF SACRAMENTO STREET, AS SAID STREET EXISTED PRIOR TO VACATION THEREOF BY RESOLUTION NO. 203-87, ADOPTED BY THE BOARD OF SUPERVISORS ON MARCH 20, 1987 AND APPROVED BY THE MAYOR ON MARCH 27, 1987 WITH A LINE DRAWN NORTHWESTERLY AT A RIGHT ANGLE TO THE NORTHWESTERLY LINE OF MARKET STREET FROM A POINT DISTANT THEREON 353.248 FEET NORTHEASTERLY FROM THE NORTHERLY LINE OF CALIFORNIA STREET; RUNNING THENCE NORTHWESTERLY ALONG THE NORTHWESTERLY EXTENSION OF SAID LINE DRAWN AT A RIGHT ANGLE TO MARKET STREET FROM SAID POINT, A DISTANCE OF 199.753 FEET TO ITS INTERSECTION WITH A LINE DRAWN SOUTHERLY AT A RIGHT ANGLE TO THE SOUTHERLY LINE OF CLAY STREET FROM A POINT DISTANT THEREON 210.849 FEET EASTERLY FROM THE EASTERLY LINE OF DRUMM STREET; THENCE NORTHERLY ALONG SAID LINE SO DRAWN 137.50 FEET TO THE SOUTHERLY LINE OF CLAY STREET AND THE TERMINUS OF THE SAID PROPERTY LINE.

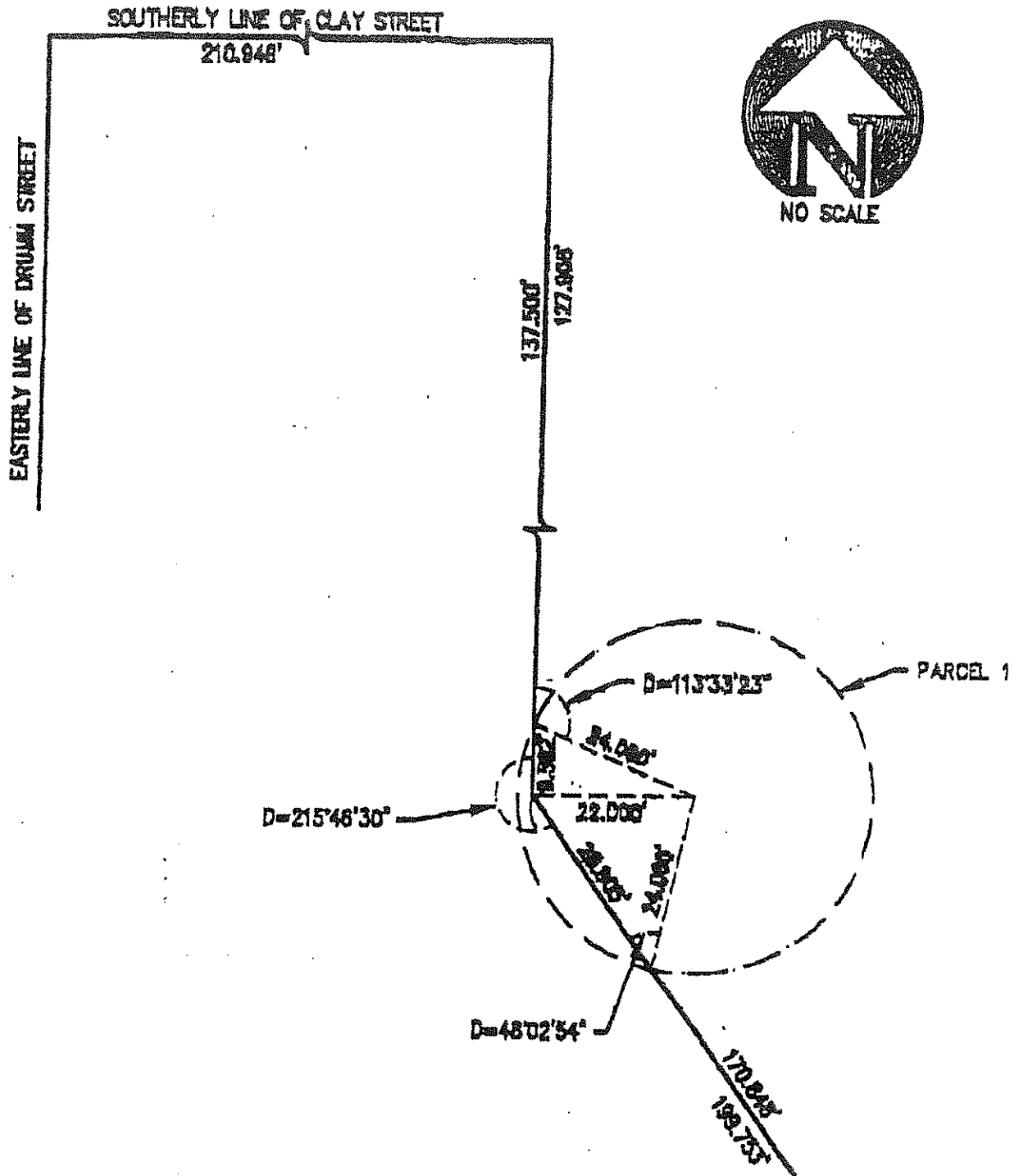
THE RADIUS POINT FOR THE CIRCLE HAVING A RADIUS OF 24.00 FEET IS LOCATED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE FORMER CENTER LINE OF SACRAMENTO STREET, AS SAID STREET EXISTED PRIOR TO VACATION THEREOF BY RESOLUTION NO. 203-87, ADOPTED BY THE BOARD OF SUPERVISORS ON MARCH 20, 1987 AND APPROVED BY THE MAYOR ON MARCH 27, 1987 WITH A LINE DRAWN NORTHWESTERLY AT A RIGHT ANGLE TO THE NORTHWESTERLY LINE OF MARKET STREET FROM A POINT DISTANT THEREON 353.248 FEET NORTHEASTERLY FROM THE NORTHERLY LINE OF CALIFORNIA STREET; RUNNING THENCE NORTHWESTERLY ALONG THE NORTHWESTERLY EXTENSION OF SAID LINE DRAWN AT A RIGHT ANGLE TO MARKET STREET FROM SAID POINT, A DISTANCE OF 199.753 FEET TO ITS INTERSECTION WITH A LINE DRAWN SOUTHERLY AT A RIGHT ANGLE TO THE SOUTHERLY LINE OF CLAY STREET FROM A POINT DISTANT THEREON 210.849 FEET EASTERLY FROM THE EASTERLY LINE OF DRUMM STREET; THENCE EASTERLY PARALLEL WITH THE SOUTHERLY LINE OF CLAY STREET 22.000 FEET TO THE RADIUS POINT.

PARCEL 2

BEGINNING AT THE POINT OF INTERSECTION OF THE FORMER CENTER LINE OF SACRAMENTO STREET, AS SAID STREET EXISTED PRIOR TO VACATION THEREOF BY RESOLUTION NO. 203-87, ADOPTED BY THE BOARD OF SUPERVISORS ON MARCH 20, 1987 AND APPROVED BY THE MAYOR ON MARCH 27, 1987 WITH A LINE DRAWN NORTHWESTERLY AT A RIGHT ANGLE TO THE NORTHWESTERLY LINE OF MARKET STREET FROM A POINT DISTANT THEREON 353.248 FEET NORTHEASTERLY FROM THE NORTHERLY LINE OF CALIFORNIA STREET; RUNNING THENCE SOUTHEASTERLY ALONG SAID LINE DRAWN AT A RIGHT ANGLE TO MARKET STREET FROM SAID POINT, A DISTANCE OF 8.00 FEET; THENCE NORTHERLY AT RIGHT ANGLES TO SAID FORMER CENTER LINE A DISTANCE OF 7.302 FEET TO SAID FORMER CENTER LINE; THENCE WESTERLY ALONG SAID FORMER CENTER LINE A DISTANCE OF 5.261 FEET TO THE POINT OF BEGINNING.

4241 H
Dec 20, 2000



SEE SHEET NO. 2

KCA ENGINEERS, INC.

CONSULTING ENGINEERS • ARCHITECTS • PLANNERS
1700 MARKET ST. • SAN FRANCISCO, CALIFORNIA 94102 • TEL (415) 774-1111 • FAX (415) 774-1112

EASEMENT PLAT FOR
EMBARCADERO CENTER NO. 4

SAN FRANCISCO

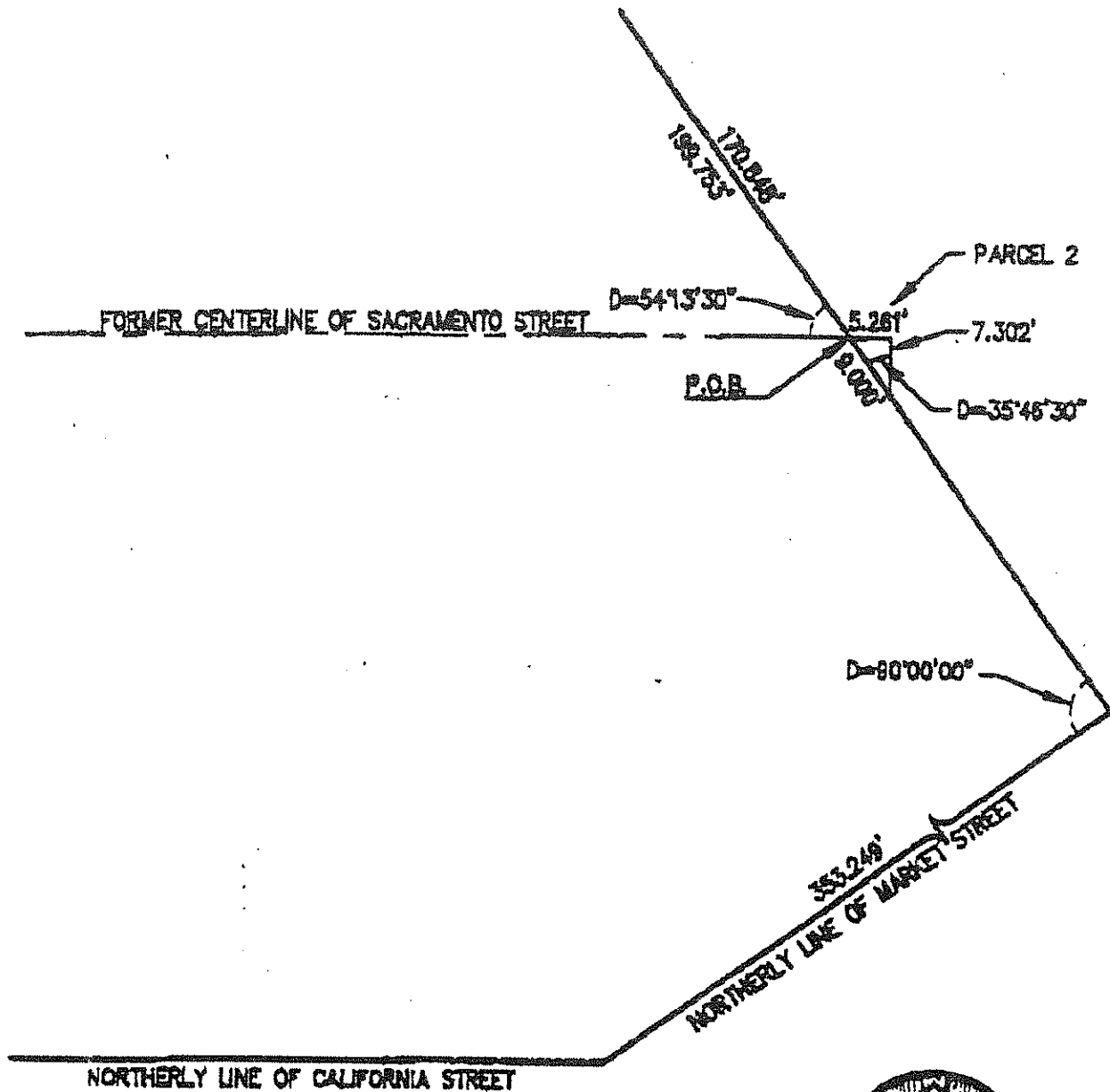
CALIFORNIA

4241H

DEC 2000

1 of 2

SEE SHEET NO. 1



4241H

KCA ENGINEERS, INC.

CONSULTING ENGINEERS • SURVEYORS • PLANNERS

240 BATTERY ST. • SAN FRANCISCO, CALIFORNIA 94111 • (415) 774-0400

EASEMENT PLAT FOR
EMBARCADERO CENTER NO. 4

SAN FRANCISCO

CALIFORNIA

DEC 2000

2 of 2

EXHIBIT E

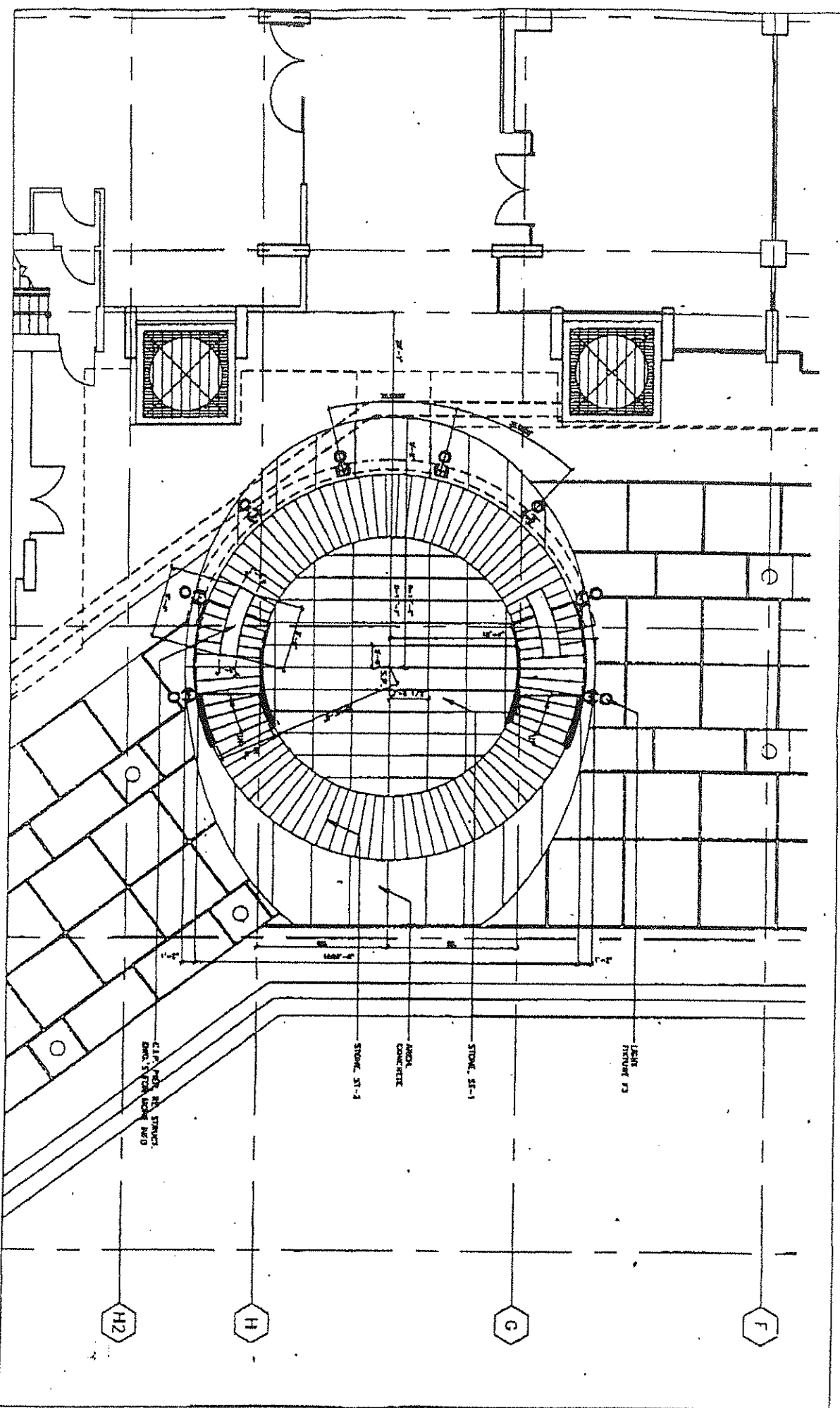
DRAWINGS OF REPLACEMENT STAIRCASE

(See attached.)

BOSTON PROPERTIES

EMBARCADERO SITE IMPROVEMENTS

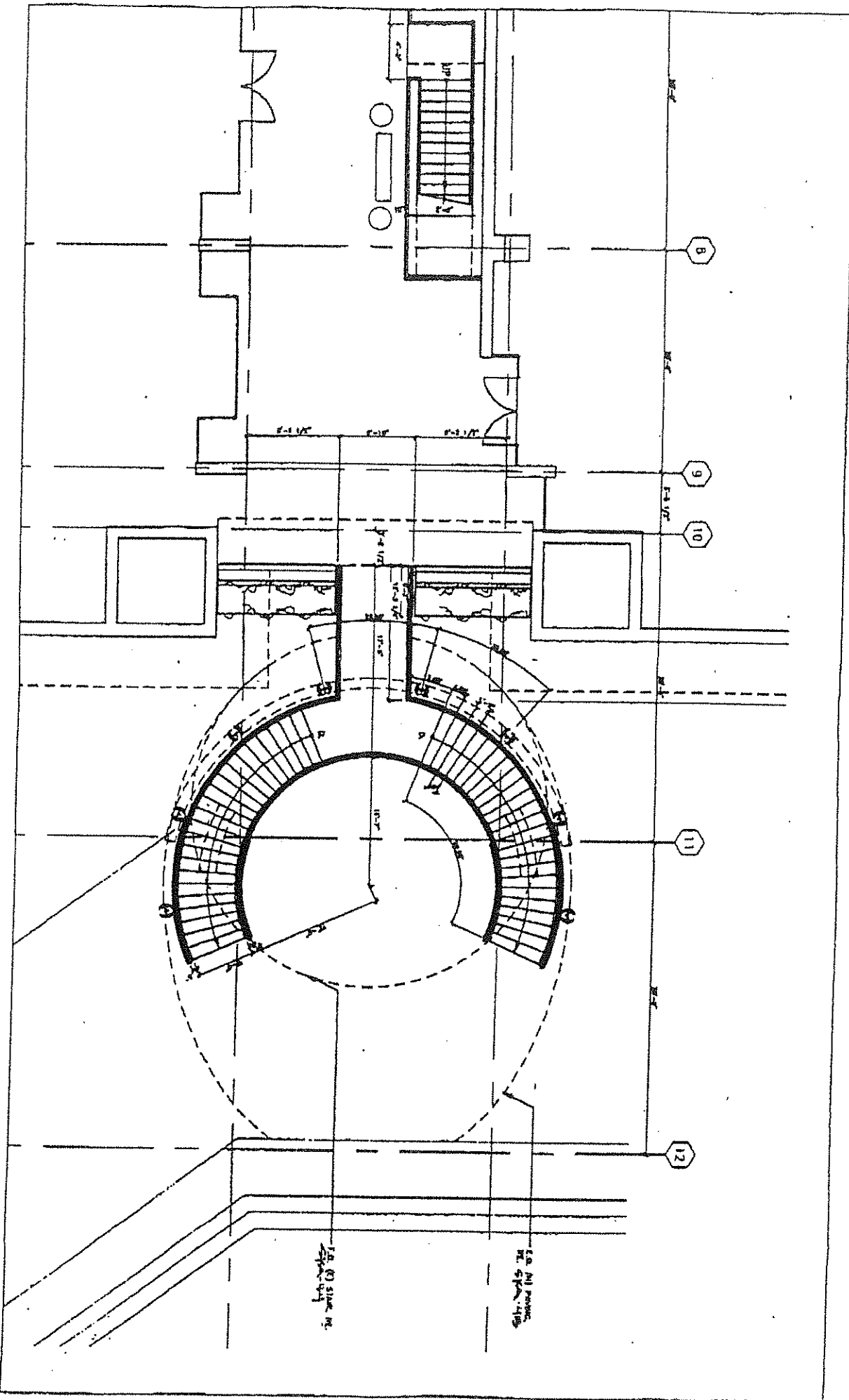
STATION AT EMBARCADERO PLAZA - PLAZA LEVEL, PLAN



SKA 45
REV 2007

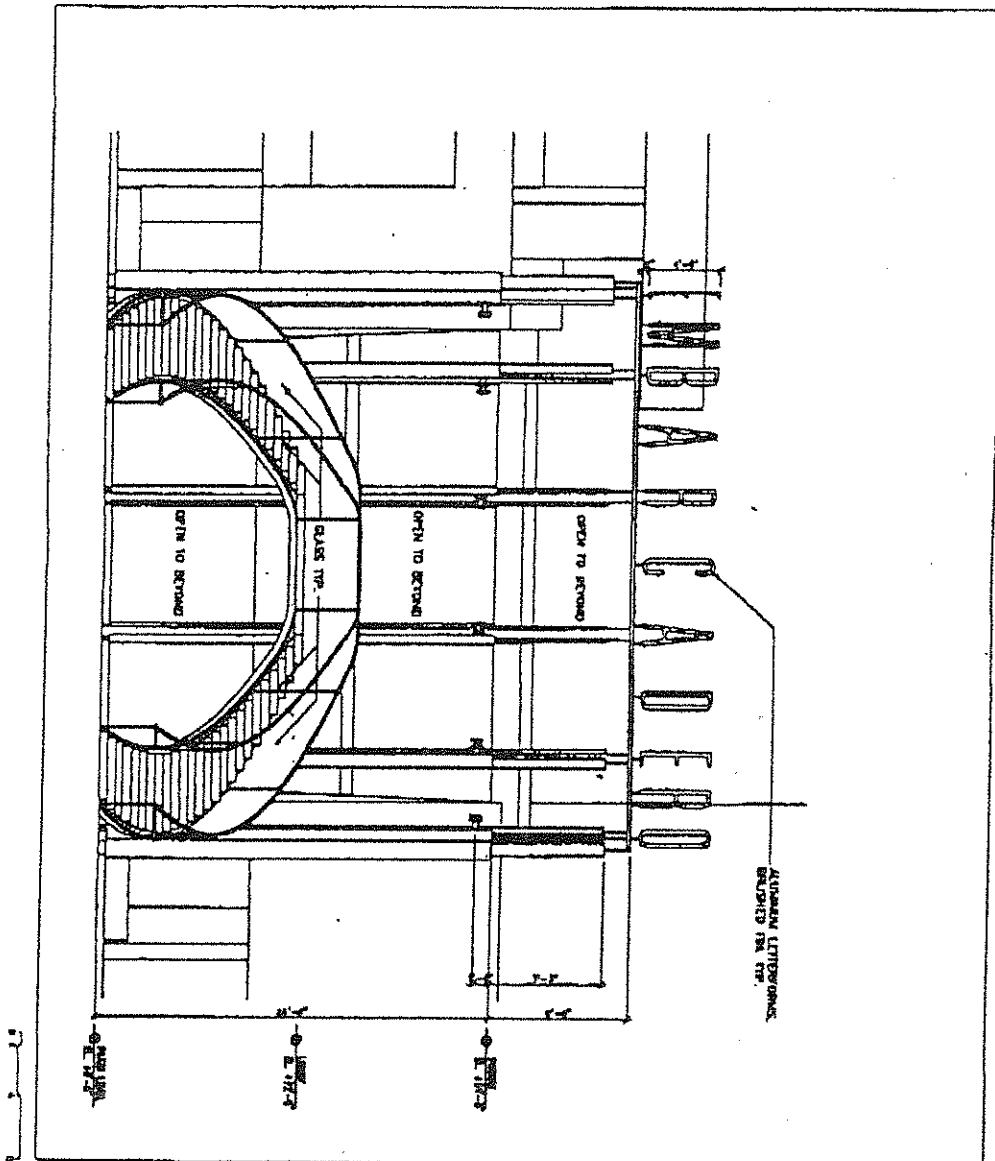
BOSTON PROPERTIES
SOM LLP

EMBARCADERO SITE IMPROVEMENTS
STAIR AT ALISTIN HERMAN PLAZA - LOBBY LEVEL PLAN



BOSTON PROPERTIES
SMALL P

EMBARCADERO SITE IMPROVEMENTS
STAIR AT JUSTIN HERRMAN DR A7A, EAST ELEVATION



**BOSTON PROPERTIES
SMLLP**

EMBARCADERO SITE IMPROVEMENTS
STAIR AT JUSTIN HERMAN PLAZA - SECTION FACING NORTH

SKA 48
JULY 2003

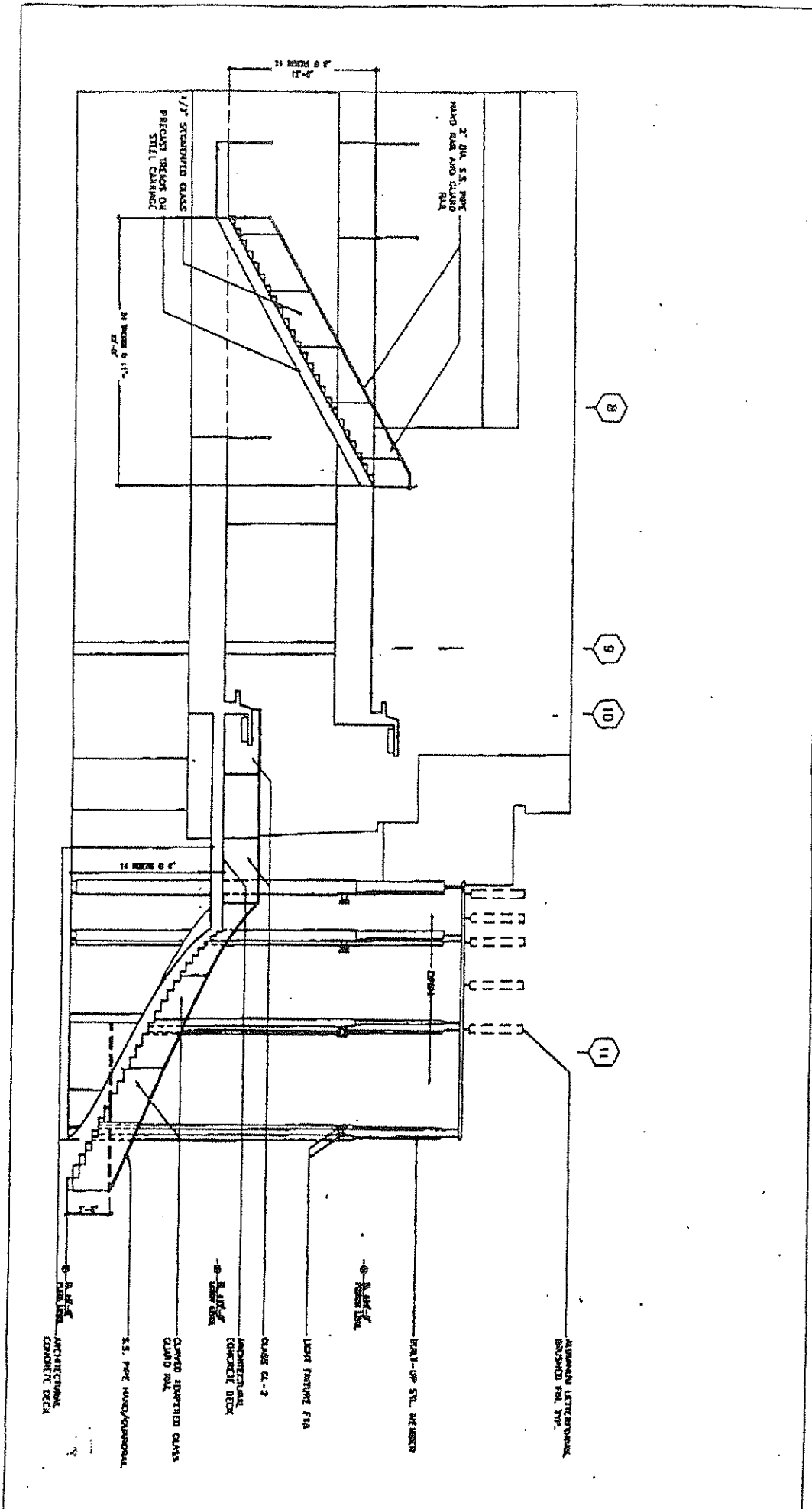
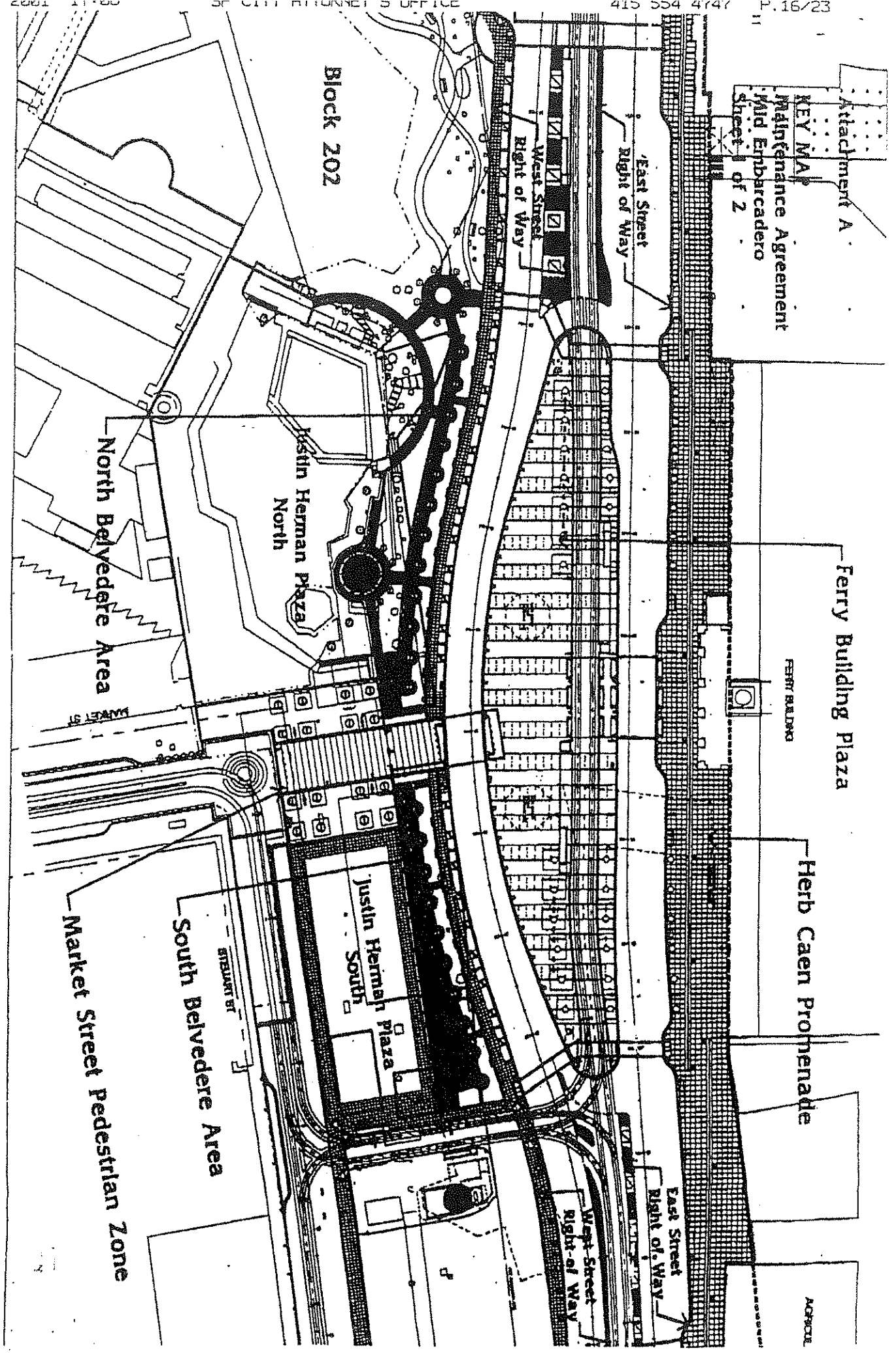


EXHIBIT F

MAP OF JUSTIN HERMAN PLAZA AND
BELVEDERE AREAS

(See attached.)

Attachment A
 KEY MAP
 Maintenance Agreement
 Mid Embarcadero
 Sheet 1 of 2



Block 202

Ferry Building Plaza

FERRY BUILDING

Herb Caen Promenade

Justin Herman Plaza North

Justin Herman Plaza South

North Belvedere Area

South Belvedere Area

Market Street Pedestrian Zone

East Street Right of Way
West Street Right of Way

East Street Right of Way
West Street Right of Way

STILLWATER ST

ACRUE

EXHIBIT G

MAINTENANCE REQUIREMENTS

Maintenance Requirements

Permittee shall perform the following tasks at Justin Herman Plaza North and South and the Belvedere Areas North and South throughout the Term of the Permit.

Pedestrian Paving: Maintenance of paving includes sweeping, cleaning, janitorial services, power washing, and graffiti removal. Maintenance does not include repairs or replacement unless otherwise noted.

1. Justin Herman Plaza North and South:
 - Permittee shall maintain all concrete and brick paving including power washing and graffiti removal.
 - Permittee shall not be responsible for the replacement and repair work of concrete and brick paving.
2. Belvedere Areas North and South:
 - Permittee shall maintain all concrete and brick paving including power washing and graffiti removal.
 - Permittee shall not be responsible for the replacement and repair work of concrete and brick paving.

Site Furniture: Maintenance of site furniture includes cleaning, janitorial services, power washing, and graffiti removal. Maintenance does not include repairs or replacement unless otherwise noted.

1. Justin Herman Plaza North and South:
 - Permittee shall maintain benches in Justin Herman Plaza North.
 - Permittee shall not be responsible for the repairs and/or replacement of benches in Justin Herman Plaza north.
 - Permittee shall not be responsible for maintenance, repair and replacement of benches in Justin Herman South.
 - Permittee shall empty and replace all trash receptacles.
 - Permittee shall be responsible for maintaining all wall surfaces.
2. Belevedere Areas North and South:
 - Permittee shall not be responsible for the maintenance, repair and replacement of all benches.
 - Permittee shall empty all trash receptacles.
 - Permittee shall not be responsible for the replacement of trash receptacles.
 - Permittee shall be responsible for maintaining all wall surfaces.

Planting and Irrigation: Irrigation system maintenance shall include all work beginning at the back of water meter to sprinkler heads. Tree maintenance shall include trimming, staking and replacing trees; and replacing tree grates, mulch and groundcover plantings.

1. Justin Herman Plaza North and South:

- Permittee shall not be responsible for the maintenance of all Palm trees, as well as the adjustment repair and replacement of the irrigation system serving these trees.
- Permittee shall maintain the six (6) Elm trees in Justin Herman Plaza North, but shall not be responsible for the maintenance of their irrigation system.
- Permittee shall maintain all lawn areas, including mowing, fertilizing, and lawn replacement.
- Permittee shall not be responsible for the maintenance of the irrigation main lines, but shall be responsible for the repair and replacement of the sprinkler heads in the irrigation system for the lawn area.

2. Belvedere Areas North and South:

- Permittee shall maintain the four (4) new Ginkgo trees, but shall not be responsible for the maintenance of their irrigation system.
- Permittee shall not be responsible for the maintenance of all Palm trees, or for the adjustment, repair and replacement of the irrigation system servicing these trees.
- Permittee shall maintain all lawn areas, including mowing, fertilizing, and lawn replacement.
- Permittee shall not be responsible for the maintenance of the irrigation main lines, but shall be responsible for the repair and replacement of the sprinkler heads in the irrigation system for the lawn area.

EXHIBIT H

(See attached)

EXHIBIT I

RECORDING REQUESTED BY The City and County of San Francisco AND WHEN RECORDED MAIL TO City and County of San Francisco Recreation & Park Department McLaren Lodge 501 Stanyan Street San Francisco, California 94117 Attention: Director of Property Management	
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SPACE ABOVE THIS LINE FOR RECORDER'S USE
Record without fees (Gov. Code § 27383)

CITY AND COUNTY OF SAN FRANCISCO

**ADDENDUM TO EXHIBIT E (REVOCABLE PERMIT) TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
ON PROPERTY**

THIS ADDENDUM TO EXHIBIT E (REVOCABLE PERMIT) to the Declaration of Covenants, Conditions and Restrictions, dated for reference purposes only as of _____, 20__, is made by and among the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Recreation and Park Commission ("Commission"), _____ ("Permittee") and _____ ("Assignee").

RECITALS

A. This Addendum is made to the Revocable Permit relating to the real property of Permittee known as Assessor's Block 233, Lot 44, commonly known as Four Embarcadero Plaza, San Francisco, California, and to that certain real property adjacent thereto owned by the City, commonly known as Justin Herman Plaza North ("Permit"), which Permit is attached as Exhibit D to the Declaration of Covenants, Conditions and Restrictions dated as of _____, 2001, and recorded on _____, 2001, in the Official Records of San Francisco County, California, as Document No. _____.

B. The Permit provides for assignment upon certain conditions. Permittee wishes now to assign the Permit to Assignee.

C. Permittee and Assignee have satisfied all conditions for assignment of the Permit.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City, Permittee and Assignee agree as follows:

1. Assignee hereby expressly agrees to be bound by the terms, conditions and restrictions set forth in the Permit and, for the benefit of the City, assumes all the rights, privileges, responsibilities, duties and obligations of the Permittee under the Permit.

2. The City hereby consents to Permittee's assignment of the Permit and releases and forever discharges Permittee from any and all liabilities and obligations arising under the Permit from and after the date of City's execution of this Addendum.

3. Except as expressly set forth herein, all of the terms, conditions and provisions of the Permit shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the date first below written.

PERMITTEE:

Date: _____

Date: _____

STATE OF _____

)

)ss:

COUNTY OF _____

)

On this _____ day of _____, 20____, before me, _____, a Notary Public in and for said County and State, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed in the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

ASSIGNEE:

Date: _____

Date: _____

STATE OF _____

)

)ss:

COUNTY OF _____

)

On this _____ day of _____, 20____, before me,
 _____, a Notary Public in and for said County and State,
 personally appeared _____, proved to me on the basis of
 satisfactory evidence to be the person(s) whose name(s) is/are subscribed in the within
 instrument and acknowledged to me that he/she/they executed the same in his/her/their
 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
 person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

 Notary Public

CITY:
CITY AND COUNTY OF SAN
FRANCISCO,
 a municipal corporation

Date: _____

 General Manager
 Recreation and Park Department

APPROVED AS TO FORM:

LOUISE H. RENNE
 City Attorney

By: _____
 Deputy City Attorney

STATE OF _____

COUNTY OF _____

)
)ss:
)

On this _____ day of _____, 20____, before me,
 _____, a Notary Public in and for said County and State,
 personally appeared _____, proved to me on the basis of
 satisfactory evidence to be the person(s) whose name(s) is/are subscribed in the within
 instrument and acknowledged to me that he/she/they executed the same in his/her/their
 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
 person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

 Notary Public